but not including off-duty periods which are provided pursuant to the employment agreement).'' The ''hourly rate prescribed by'' paragraph (1) of the subsection is the minimum wage rate applicable according to the schedule shown in § 783.23.

§ 783.27 Scope of the provisions regarding "seamen".

In accordance with the above provisions of the Act as amended, an employee employed as a seaman is exempt only from its overtime pay provisions under the new section 13(b)(6), unless the vessel on which he is employed is not an American vessel. Section 13(a)(14) as amended continues the prior exemption, from minimum wages as well as overtime pay, for any employees employed as a seaman on a vessel other than an American vessel. Thus, to come within this latter exemption an employee now must be ''employed as'' a ''seaman'' on a vessel other than an ''American vessel'', while to come within the overtime exemption provided by section 13(b)(6) an employee need only be ''employed as'' a ''seaman''. The minimum wage requirements of the Act, as provided in section 6(b) and paragraph (2) of that subsection apply if the employee is ''employed as'' a ''seaman'' on an ''American vessel''. The meaning and scope of these key words, ''employed as a seaman'' and ''American vessel'' are discussed in subsequent sections of this part. Of course, if an employee is not ''employed as'' a ''seaman'' within the meaning of this term as used in the Act, these exemptions and section 6(b)(2) would have no relevancy and his status under the Act would depend, as in the case of any other employee, upon the other facts of his employment, (§§ 783.18 through 783.20).

LEGISLATIVE HISTORY AND JUDICIAL CONSTRUCTION OF THE EXEMPTIONS

§ 783.28 General legislative history.

As originally enacted in 1938, section 13(a)(3) of the Fair Labor Standards Act exempted from both the minimum wage and overtime pay requirements ''any employee employed as a seaman'' (52 Stat. 1050). In 1949 when several amendments were made to the Act (63 Stat. 910), this exemption was not changed except that it was renumbered section 13(a)(14). In the 1961 amendments (75 Stat. 65), a like exemption was retained but it was limited to one employed as a seaman on a vessel other than an American vessel (section 13(a)(14)); an overtime exemption was provided for all employees employed as seamen (section 13(b)(6)), and those employed as seamen on an American vessel were brought within the minimum wage provisions (sec. 6(b)(2)).

§ 783.29 Adoption of the exemption in the original 1938 Act.

(a) The general pattern of the legislative history of the Act shows that Congress intended to exempt, as employees ''employed as'' seamen, only workers performing water transportation services. The original bill considered by the congressional committees contained no exemption for seamen or other transportation workers. At the joint hearings before the Senate and House Committees on Labor, representatives of the principal labor organizations representing seamen and other transportation workers testified orally and by writing that the peculiar needs of their industry and the fact that they were already under special governmental regulation made it unwise to bring them within the scope of the proposed legislation (see Joint Hearings before Senate Committee on Education and Labor and House Committee on Labor on S. 2475 and H.R. 7200, 75th Cong., 1st sess., pp. 545, 546, 547, 549, 1216, 1217). The committees evidently acquiesced in this view and amendments were accepted (81 Cong. Rec. 7875) and subsequently adopted in the law, exempting employees employed as seamen (sec. 13(a)(3)), certain employees of motor carriers (sec. 13(b)(1)), railroad employees (sec. 13(b)(2)), and employees of carriers by air (sec. 13(a)(4), now sec. 13(b)(3)).

(b) That the exemption was intended to exempt employees employed as ''seamen'' in the ordinary meaning of that word is evidenced by the fact that the chief proponents for the seamen's exemption were the Sailors Union of the Pacific and the National Maritime Union. The former wrote asking for an exemption for ''seamen'' for the reason

that they were already under the jurisdiction of the Maritime Commission pursuant to the Merchant Marine Act of 1936 (Joint Hearings before the Committees on Labor on S. 2475 and H.R. 7200, 75th Cong., 1st sess., pp. 1216, 1217). The representative of the latter union also asked that ''seamen'' be exempted for the same reason saying * * * ''We feel that in a general interpretation of the whole bill that the way has been left open for the proposed Labor Standards Board to have jurisdiction over those classes of workers who are engaged in transportation. While this may not have an unfavorable effect upon the workers engaged in transportation by water, we feel that it may conflict with the laws now in effect regarding the jurisdiction of the government machinery now set up to handle these problems'' (id. at p. 545). And he went on to testify, ''What we would like is an interpretation of the bill which would provide a protective clause for the 'seamen' '' (id. at p. 547).

(c) Consonant with this legislative history, the courts in interpreting the phrase ''employee employed as a seaman'' for the purpose of the Act have given it its commonly accepted meaning, namely, one who is aboard a vessel necessarily and primarily in aid of its navigation (*Walling* v. *Bay State Dredging and Contracting Co.*, 149 F. 2d 346; *Walling* v. *Haden*, 153 F. 2d 196; *Sternberg Dredging Co.* v. *Walling*, 158 F. 2d 678). In arriving at this conclusion the courts recognized that the term ''seaman'' does not have a fixed and precise meaning but that its meaning is governed by the context in which it is used and the purpose of the statute in which it is found. In construing the Fair Labor Standards Act, as a remedial statute passed for the benefit of all workers engaged in commerce, unless exempted, the courts concluded that giving a liberal interpretation of the meaning of the term ''seaman'' as used in an exemptive provision of the Act would frustrate rather than accomplish the legislative purpose (*Helena Glendale Ferry Co.* v. *Walling*, 132 F. 2d 616; *Walling* v. *Bay State Dredging and Contracting Co.*, supra; *Sternberg Dredging Co.* v. *Walling*, supra; *Walling* v. *Haden*, supra).

§ 783.30 The 1961 Amendments.

One of the steps Congress took in the 1961 Amendments to extend the monetary provisions of the Act to more workers was to limit the scope of the exemption which excluded all employees employed as seamen from application of the minimum wage and overtime provisions. This it did by extending the minimum wage provisions of the Act to one employed as a seaman on an American vessel (section 6(b)(2)), by adding to the language of section 13(a)(14) to make the exemption applicable only to a seaman employed on a vessel other than an American vessel, and finally by the addition of a new exemption, section 13(b)(6), relieving employers of overtime pay requirements with respect to those employees employed as seamen who do not come within the scope of the amended section 13(a)(14). (H. Rep. No. 75, 87th Cong., 1st sess., pp. 33, 36; Sen. Rep. No. 145, 87th Cong., 1st sess., pp. 32, 50; Statement of the Managers on the part of the House, H. (Cong.) Rep. No. 327, 87th Cong., 1st sess., p. 16.) In view of the retention in the 1961 amendments of the basic language of the original exemption, ''employee employed as a seaman'', the legislative history and prior judicial construction (see § 783.29) of the scope and meaning of this phrase would seem controlling for purposes of the amended Act.

WHO IS ''EMPLOYED AS A SEAMAN''

§ 783.31 Criteria for employment "as a seaman."

In accordance with the legislative history and authoritative decisions as discussed in §§ 783.28 and 783.29, an employee will ordinarily be regarded as ''employed as a seaman'' if he performs, as master or subject to the authority, direction, and control of the master aboard a vessel, service which is rendered primarily as an aid in the operation of such vessel as a means of transportation, provided he performs no substantial amount of work of a different character. This is true with respect to vessels navigating inland waters as well as ocean-going and coastal vessels (*Sternberg Dredging Co.* v. *Walling*, 158 F. 2d 678; *Walling* v. *Haden*, 153 F. 2d 196, certiorari denied 328 U.S.